



STATE OF MONTANA REQUEST FOR PROPOSAL (THIS IS NOT AN ORDER)

RFP Number:
#HWY- 309422-RP

RFP Title:
WEST YELLOWSTONE AIRPORT MARKETING CAMPAIGN

RFP Due Date and Time:
FEBRUARY 19, 2010
3:00pm, Local Time

Number of Pages: 34
Number of Attachments: 2

ISSUING AGENCY INFORMATION

Procurement Officer:
RICHELE PARKHURST

Issue Date:
JANUARY 13, 2010

**PURCHASING SERVICES SECTION
MONTANA DEPARTMENT OF TRANSPORTATION
P.O. BOX 201001
HELENA, MT 59620-1001**

**Phone: (406) 657-0274
Fax: (406) 256-6487**

TTY Users:
1-800-335-7592 or (406) 444-7696

Website: <http://vendor.mt.gov/>

INSTRUCTIONS TO OFFERORS

Return Sealed Proposal to:

**#HWY-309422-RP
PURCHASING SERVICES SECTION
MONTANA DEPARTMENT OF TRANSPORTATION
2701 PROSPECT AVENUE
P.O. BOX 201001
HELENA, MT 59601**

Mark Face of Envelope/Package:

**RFP Number: #HWY-309422-RP
RFP Response Due Date: 2/19/2010**

MDT attempts to provide accommodations for any known disability that may interfere with a person participating in any service, program or activity of the Department. Alternative accessible formats of this information will be provided upon request. For further information call Richele Parkhurst at (406) 657-0274 Voice or 1-800-335-7592 TTY or TTY (406) 444-7696.

IMPORTANT: SEE STANDARD TERMS AND CONDITIONS

OFFERORS MUST COMPLETE THE FOLLOWING

Offeror Name/Address:

Authorized Offeror Signatory:

(Please print name and sign in ink)

Offeror Phone Number:

Offeror FAX Number:

Offeror Federal I.D. Number:

Offeror E-mail Address:

OFFERORS MUST RETURN THIS COVER SHEET WITH RFP RESPONSE

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INSTRUCTIONS TO OFFERORS

It is the responsibility of each offeror to:

Follow the format required in the RFP when preparing your response. Provide point-by-point responses to all sections in a clear and concise manner.

Provide complete answers/descriptions. Read and answer **all** questions and requirements. Don't assume the State or evaluation committee will know what your company capabilities are or what items/services you can provide, even if you have previously contracted with the State. The proposals are evaluated based solely on the information and materials provided in your response.

Use the forms provided, i.e., cover page, sample budget form, certification forms, etc.

Submit your response on time. Note all the dates and times listed in the Schedule of Events and within the document, and be sure to submit all required items on time. Late proposal responses are **never** accepted.

The following items MUST be included in the response to be considered responsive. Failure to include any of these items may result in a nonresponsive determination.

Signed Cover Sheet

Signed Addenda (if appropriate)

Point-by-Point response to all sections and subsections (per Section 1.6.1)

Response to Appendices A and B (per Section 1.6.1)

Complete answers to all requirements of Sections 3, 4, and 5

Correctly executed State of Montana "Affidavit for Trade Secret Confidentiality" form if claiming information to be confidential or proprietary (per Section 2.2.1)

SCHEDULE OF EVENTS

<u>EVENT</u>	<u>DATE</u>
RFP Issue Date.....	1/13/10
Deadline for Receipt of Written Questions	2/03/10
Deadline for Posting of Written Answers to the State's Website	2/09/10
RFP Response Due Date	2/19/10
Review of Proposals Open to the Public.....	2/25/10
Intended Date for Contract Award	Approximately 4/1/10

SECTION 1: PROJECT OVERVIEW AND INSTRUCTIONS

1.0. PROJECT OVERVIEW

The STATE OF MONTANA, Department of Transportation (hereinafter referred to as “the State”) is seeking a contractor to provide a Marketing and Promotions Campaign to include an integration of partnership development, Internet strategies, advertising, promotions and public relations. A more complete description of the supplies and/or services sought for this project is provided in Section 3, Scope of Project. Proposals submitted in response to this solicitation must comply with the instructions and procedures contained herein.

1.1. CONTRACT TERM

The contract term is for a period of one (1) year beginning contract signature date and ending one year hence. Renewals of the contract, by mutual agreement of both parties, may be made at one (1)-year intervals, or any interval that is advantageous to the State. This contract, including any renewals, may not exceed a total of two (2) years, at the option of the State.

1.2. SINGLE POINT OF CONTACT

From the date this Request for Proposal (RFP) is issued until an offeror is selected and the selection is announced by the procurement officer, **offerors are not allowed to communicate with any state staff or officials regarding this procurement, except at the direction of Richele Parkhurst**, the procurement officer in charge of the solicitation. Any unauthorized contact may disqualify the offeror from further consideration. Contact information for the single point of contact is as follows:

Procurement Officer:	Richele Parkhurst
Address:	Purchasing Services Section Montana Department of Transportation 2701 Prospect Avenue PO Box 201001 Helena, Montana 59620-1001
Telephone Number:	(406) 657-0274
Fax Number:	(406) 256-6487
E-mail Address:	rparkhurst@mt.gov

1.3. DEFINITION OF TERMS

- “RFP” means the Request for Proposal process
- “State” means the Montana Department of Transportation
- “Offeror” means the individual, organization or corporation interested in providing services as stated herein.
- “Evaluation Committee” means the group of people who will be reviewing and evaluating the offers received.
- “WYS” means Yellowstone Airport
- “EAS” means Essential Air Service

1.4. REQUIRED REVIEW

1.4.1. REVIEW RFP. Offerors should carefully review the instructions, mandatory requirements, specifications, standard terms and conditions, and contract set out in this RFP and promptly notify the procurement officer identified above in writing or via e-mail of any ambiguity, inconsistency, unduly restrictive specifications, or error which they discover upon examination of this RFP. This should include any terms or requirements within the RFP that either preclude the offeror from responding to the RFP or add unnecessary cost. This notification must be accompanied by an explanation and suggested modification and be received by the deadline for receipt of written or e-mailed inquiries set forth below. The State will make any final determination of changes to the RFP.

1.4.2. FORM OF QUESTIONS. Offerors with questions or requiring clarification or interpretation of any section within this RFP must address these questions in writing or via e-mail to the procurement officer referenced above on or before February 3, 2010. Each question must provide clear reference to the section, page, and item in question. Questions received after the deadline will not be considered.

1.4.3. STATE'S ANSWERS. The State will provide an official written answer by February 9, 2010 to all questions received by February 3, 2010. The State's response will be by formal written addendum. Any other form of interpretation, correction, or change to this RFP will not be binding upon the State. Any formal written addendum will be posted on the State's website alongside the posting of the RFP at [HTTP://GSD.MT.GOV/OSBS/RESULTS.ASP?AGENCYID=TRANS1](http://GSD.MT.GOV/OSBS/RESULTS.ASP?AGENCYID=TRANS1) by the close of business on the date listed. Offerors must sign and return with their RFP response an Acknowledgment of Addendum for any addendum issued.

1.5. GENERAL REQUIREMENTS

1.5.1. ACCEPTANCE OF STANDARD TERMS AND CONDITIONS/CONTRACT. By submitting a response to this RFP, offeror agrees to acceptance of the standard terms and conditions and contract as set out in Appendices A and B of this RFP. Much of the language included in the standard terms and conditions and contract reflects requirements of Montana law. Requests for additions or exceptions to the standard terms and conditions, contract terms, including any necessary licenses, or any added provisions must be submitted to the procurement officer referenced above by the date for receipt of written/e-mailed questions and must be accompanied by an explanation of why the exception is being sought and what specific effect it will have on the offeror's ability to respond to the RFP or perform the contract. The State reserves the right to address non-material requests for exceptions with the highest scoring offeror during contract negotiation. Any material exceptions requested and granted to the standard terms and conditions and contract language will be addressed in any formal written addendum issued for this RFP and will apply to all offerors submitting a response to this RFP. The State will make any final determination of changes to the standard terms and conditions and/or contract.

1.5.2. RESULTING CONTRACT. This RFP and any addenda, the offeror's RFP response, including any amendments, a best and final offer, and any clarification question responses shall be included in any resulting contract. The State's contract, attached as Appendix B, contains the contract terms and conditions which will form the basis of any contract between the State and the highest scoring offeror. In the event of a dispute as to the duties and responsibilities of the parties under this contract, the contract, along with any attachments prepared by the State, will govern in the same order of precedence as listed in the contract.

1.5.3. UNDERSTANDING OF SPECIFICATIONS AND REQUIREMENTS. By submitting a response to this RFP, offeror agrees to an understanding of and compliance with the specifications and requirements described in this RFP.

1.5.4. PRIME CONTRACTOR/SUBCONTRACTORS. The highest scoring offeror will be the prime contractor if a contract is awarded and shall be responsible, in total, for all work of any subcontractors. All subcontractors, if any, must be listed in the proposal. The State reserves the right to approve all subcontractors. The Contractor shall be responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. Further, nothing contained within this document or any contract documents created as a result of any contract awards derived from this RFP shall create any contractual relationships between any subcontractor and the State.

1.5.5. OFFEROR'S SIGNATURE. The proposals must be signed in ink by an individual authorized to legally bind the business submitting the proposal. The offeror's signature on a proposal in response to this RFP guarantees that the offer has been established without collusion and without effort to preclude the State of Montana from obtaining the best possible supply or service. Proof of authority of the person signing the RFP response must be furnished upon request.

1.5.6. OFFER IN EFFECT FOR 120 DAYS. A proposal may not be modified, withdrawn or canceled by the offeror for a 120-day period following the deadline for proposal submission as defined in the Schedule of Events, or receipt of best and final offer, if required, and offeror so agrees in submitting the proposal.

1.6. SUBMITTING A PROPOSAL

1.6.1. ORGANIZATION OF PROPOSAL. Offerors must organize their proposal into sections that follow the format of this RFP, with tabs separating each section. A point-by-point response to all numbered sections, subsections, and appendices (section 1.1 through section 6.0, appendix A and Appendix B) is required. If no explanation or clarification is required in the offeror's response to a specific subsection, the offeror shall indicate so in the point-by-point response or utilize a blanket response for the entire section with the following statement:

"(Offeror's Name)" understands and will comply.

An offeror making the statement "Refer to our literature..." or "Please see www...com" may be deemed nonresponsive or receive point deductions. If making reference to materials located in another section of the RFP response, specific page numbers and sections must be noted. The Evaluation Committee is not required to search through literature or another section of the proposal to find a response.

1.6.2. FAILURE TO COMPLY WITH INSTRUCTIONS. Offerors failing to comply with these instructions may be subject to point deductions. The State may also choose to not evaluate, may deem non-responsive, and/or may disqualify from further consideration any proposals that do not follow this RFP format, are difficult to understand, are difficult to read, or are missing any requested information.

1.6.3. MULTIPLE PROPOSALS. Offerors may, at their option, submit multiple proposals, in which case each proposal shall be evaluated as a separate document.

1.6.4. COPIES REQUIRED AND DEADLINE FOR RECEIPT OF PROPOSALS. Offerors must submit two original proposals and four copies to the Purchasing Services Section. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to RFP #HWY-309422-RP. ***Proposals must be received at the Purchasing Services Section prior to 3:00pm, local time, February 19, 2010. Facsimile responses WILL NOT be accepted.***

1.6.5. LATE PROPOSALS. ***Regardless of cause, late proposals will not be accepted and will automatically be disqualified from further consideration.*** It shall be the offeror's sole risk to assure delivery at the receptionist's desk at the designated office by the designated time. Late proposals will not be opened and may be returned to the offeror at the expense of the offeror or destroyed if requested.

1.6.6. ADDRESSING OF PROPOSALS. Proposals MUST be returned in a sealed package and marked as shown below:

#HWY- 309422-RP
Purchasing Services Section
Montana Department of Transportation
2701 Prospect Avenue
P.O. Box 201001
Helena, MT 59601

Proposals that are not returned in a sealed package, with the Request for Proposal Number clearly labeled on the outside WILL BE DISQUALIFIED.

1.7. COST OF PREPARING A PROPOSAL

1.7.1. STATE NOT RESPONSIBLE FOR PREPARATION COSTS. The costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the State are entirely the responsibility of the offeror. The State is not liable for any expense incurred by the offeror in the preparation and presentation of their proposal or any other costs incurred by the offeror prior to execution of a contract.

1.7.2. ALL TIMELY SUBMITTED MATERIALS BECOME STATE PROPERTY. All materials submitted in response to this RFP become the property of the State and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the State and offeror resulting from this RFP process.

SECTION 2: RFP STANDARD INFORMATION

2.0. AUTHORITY

This RFP is issued under the authority of section 18-4-304, MCA (Montana Code Annotated) and ARM 2.5.602 (Administrative Rules of Montana). The RFP process is a procurement option allowing the award to be based on stated evaluation criteria. The RFP states the relative importance of all evaluation criteria. No other evaluation criteria, other than as outlined in the RFP, will be used.

2.1. OFFEROR COMPETITION

The State encourages free and open competition among offerors. Whenever possible, the State will design specifications, proposal requests, and conditions to accomplish this objective, consistent with the necessity to satisfy the State's need to procure technically sound, cost-effective services and supplies.

2.2. RECEIPT OF PROPOSALS AND PUBLIC INSPECTION

2.2.1. PUBLIC INFORMATION. All information received in response to this RFP, including copyrighted material, is deemed public information and will be made available for public viewing and copying shortly after the time for receipt of proposals has passed with the following four exceptions: (1) bona fide trade secrets meeting the requirements of the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA, that have been properly marked, separated, and documented; (2) matters involving individual safety as determined by the State; (3) any company financial information requested by the State to determine vendor responsibility, unless prior written consent has been given by the offeror as set out in section 18-4-308, MCA; and (4) other constitutional protections. See Mont. Code Ann. § 18-4-304. The interested party is responsible for the cost of copies.

2.2.2. PROCUREMENT OFFICER REVIEW OF PROPOSALS. Upon opening the proposals received in response to this RFP, the procurement officer in charge of the solicitation will review the proposals and separate out any information that meets the referenced exceptions in Section 2.2.1 above, providing the following conditions have been met:

- Confidential information is clearly marked and separated from the rest of the proposal.
- The proposal does not contain confidential material in the cost or price section.
- An affidavit from an offeror's legal counsel attesting to and explaining the validity of the trade secret claim as set out in Title 30, chapter 14, part 4, MCA, is attached to each proposal containing trade secrets. Counsel must use the State of Montana "Affidavit for Trade Secret Confidentiality" form in requesting the trade secret claim. This affidavit form is available on the General Services Division's website at: <http://gsd.mt.gov/procurement/forms.asp>
- or by calling (406) 444-2575.

Information separated out under this process will be available for review only by the procurement officer, the evaluation committee members, and limited other designees. Offerors must be prepared to pay all legal costs and fees associated with defending a claim for confidentiality in the event of a "right to know" (open records) request from another party.

The claim of a trade secret must be reasonable. If materials or information are included in a request for trade secret coverage that are not reasonably considered a "trade secret," the proposal will be rejected as non-responsive and will not be considered. In such cases, an offeror will not be given an opportunity to revise the proposal.

2.3. CLASSIFICATION AND EVALUATION OF PROPOSALS

2.3.1. INITIAL CLASSIFICATION OF PROPOSALS AS RESPONSIVE OR NONRESPONSIVE.

All proposals will initially be classified as either “responsive” or “nonresponsive,” in accordance with ARM 2.5.602. Proposals may be found nonresponsive at any time during the procurement process if any of the required information is not provided; the submitted price is found to be excessive or inadequate as measured by criteria stated in the RFP; or the proposal is not within the plans and specifications described and required in the RFP. If a proposal is found to be nonresponsive, it will not be considered further.

2.3.2. DETERMINATION OF RESPONSIBILITY. The procurement officer will determine whether an offeror has met the standards of responsibility in accordance with ARM 2.5.407. Such a determination may be made at any time during the evaluation process and through contract negotiation if information surfaces that would result in a determination of nonresponsibility. If an offeror is found nonresponsive, the determination must be in writing, made a part of the procurement file and mailed to the affected offeror.

2.3.3. EVALUATION OF PROPOSALS. The evaluation committee will evaluate the remaining proposals and recommend whether to award the contract to the highest scoring offeror or, if necessary, to seek discussion/negotiation or a best and final offer in order to determine the highest scoring offeror. All responsive proposals will be evaluated based on stated evaluation criteria. In scoring against stated criteria, the State may consider such factors as accepted industry standards and a comparative evaluation of all other qualified RFP responses in terms of differing price, quality, and contractual factors. These scores will be used to determine the most advantageous offering to the State. If an evaluation committee meets to deliberate and evaluate the proposals, the public may attend and observe the evaluation committee deliberations.

2.3.4. COMPLETENESS OF PROPOSALS. Selection and award will be based on the offeror’s proposal and other items outlined in this RFP. Submitted responses may not include references to information located elsewhere, such as Internet websites or libraries, unless specifically requested. Information or materials presented by offerors outside the formal response or subsequent discussion/negotiation or “best and final offer,” if requested, will not be considered, will have no bearing on any award, and may result in the offeror being disqualified from further consideration.

2.3.5. BEST AND FINAL OFFER. The “Best and Final Offer” is an option available to the State under the RFP process, which permits the State to request a “best and final offer” from one or more offerors if additional information is required to make a final decision. Offerors may be contacted asking that they submit their “best and final offer,” which must include any and all discussed and/or negotiated changes. The State reserves the right to request a best and final offer for this RFP, if any, based on price/cost alone.

2.3.6. EVALUATOR/EVALUATION COMMITTEE RECOMMENDATION FOR CONTRACT AWARD. The evaluator/evaluation committee will provide a written recommendation for contract award to the procurement officer that contains the scores, justification and rationale for its decision. The procurement officer will review the recommendation to ensure its compliance with the RFP process and criteria before concurring in the evaluator’s/evaluation committee’s recommendation of the responsive and responsible offeror that achieves the highest score and is, therefore, the most advantageous to the State.

2.3.7. REQUEST FOR DOCUMENTS NOTICE. Upon concurrence with the evaluation committee’s recommendation the procurement officer will issue a “Request for Documents Notice” to the highest scoring offeror to obtain the required documents/information, such as insurance documents, contract performance security, an electronic copy of any requested material, i.e., RFP response, response to clarification questions, and/or best and final offer, and any other necessary documents. Receipt of the “Request for Documents Notice” does not constitute a contract and **no work may begin until a contract signed by all parties is in place.** The procurement officer will notify all other offerors of the State’s selection.

2.3.8. CONTRACT EXECUTION. Upon receipt of all required materials requested in the “Request for Documents Notice,” a formal contract utilizing the contract attached as Appendix B and incorporating the Standard Terms and Conditions attached as Appendix A, as well as the highest scoring offeror’s response to the RFP, will be provided to the highest scoring offeror for signature. The highest scoring offeror will be expected to accept and agree to all material requirements contained in the contract as set out in Appendices A and B of this RFP. If the highest scoring offeror does not accept all material requirements, the State may move to the next highest scoring offeror, or cancel the RFP. Work under the contract may begin when the contract is fully executed, i.e., when the contract is signed by all parties.

2.4. STATE’S RIGHTS RESERVED

While the State has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the State of Montana to award and execute a contract. Upon a determination such actions would be in its best interest, the State, in its sole discretion, reserves the right to:

- cancel or terminate this RFP (Mont. Code Ann. § 18-4-307, MCA);
- reject any or all proposals received in response to this RFP (ARM 2.5.602);
- waive any undesirable, inconsequential, or inconsistent provisions of this RFP which would not have significant impact on any proposal (ARM 2.5.505);
- not award if it is in the best interest of the State not to proceed with contract execution (ARM 2.5.602); or
- if awarded, terminate any contract if the State determines adequate state funds are not available (Mont. Code Ann. § 18-4-313).

2.5. FEDERAL AID REQUIREMENTS

A numerical goal of 0% (zero percent) has been assigned to this project; offerors are encouraged to utilize the Schedule to indicate a commitment to using a DBE for a portion of the work in this project.

SECTION 3: SCOPE OF PROJECT

3.0. BACKGROUND

Yellowstone Airport (WYS) is a unique facility operated by the State of Montana. The airport supports seasonal commercial air service from the beginning of June until the end of September to Gallatin and Madison Counties in Montana, Fremont County in Idaho and the communities of West Yellowstone, MT, Big Sky, MT and Island Park, ID. WYS also provides the closest summer air service option for Yellowstone National Park.

Commercial travel to the WYS is severely underutilized. The State's goal is to increase the declining ridership and reduce the need for an Essential Air Service (EAS) subsidy. The primary object of this marketing campaign is to increase awareness of the WYS, ultimately improving air service.

A market research for this campaign, which was completed in October 2009, included two separate phases:

- 1) Air traffic issues and analyses
- 2) Audience awareness and perceptions

These two phases of research (Attachment #1 and 2) identified service deficiencies and provided quantitative data and direction for the subsequent audience research and the basis for the development of a marketing and promotion campaign.

3.1. OVERVIEW

Offeror will provide a Marketing Campaign to be implemented to promote WYS with community, tourism and commercial partners based on the data gathered from Phases 1 and 2.

Phase 3 will be the development and implementation of a marketing and promotion campaign to provide a foundation for the long-term marketing strategies and goals of the airport. Recommended target audiences will be identified in the marketing plan, based on the two research studies in the first two phases (listed above) of the project.

Items to be included, but not limited to, are the utilization of a PR marketing distribution and tracking service, web and print media marketing campaigns, local advertising and collaboration, event marketing and general marketing consultation.

3.2. OWNERSHIP

All data, summaries, charts, records, materials, manuals, etc. collected, developed and prepared as a result of the RFP shall be the property of the DEPARTMENT for its exclusive use. The DEPARTMENT may duplicate and alter the materials without consent from the OFFEROR.

3.3. TASKS

Tasks to be included, but not limited to, are listed below to accomplish the development of the marketing campaign. Proposals must demonstrate how the offeror will complete the tasks.

- 3.3.1. Marketing Plan.** Describe in detail a marketing plan to showcase the WYS.
- 3.3.2. Web Site.** Describe in detail the web site layout, design and management of a web site.
- 3.3.3. Event Marketing.** Describe in detail how you would promote a major media event.
- 3.3.4. Print Advertising.** Describe in detail the development and placement (i.e., frequency, coverage, etc.) of ads/articles or media campaigns.
- 3.3.5. Mailings.** Describe in detail any mailings that will promote the WYS.
- 3.3.6. Relations.** Describe in detail how you will develop relations with the surrounding communities.

3.4. PROCESS

Once the State's Project Manager has identified a project that needs to be done, the following process will be utilized.

- 3.4.1.** When requested to undertake a specific task, the successful Offeror will describe how the task will be accomplished and identify a cost to complete.
- 3.4.2.** The State's Project Manager may, at its discretion, accept, reject or modify the proposal after discussions with the successful Offeror.
- 3.4.3.** Once an agreement has been reached, the State's Project Manager will issue a written notice to proceed on individual tasks and or groups of tasks requested. This notice may be sent as an email.

3.5. MEETINGS

The successful Offeror may be required to attend an initial strategy meeting to review the State's priorities and campaigns and relevant existing background information. Tasks and deliverables will be discussed and issues clearly resolved.

SECTION 4: OFFEROR QUALIFICATIONS

4.0. STATE'S RIGHT TO INVESTIGATE AND REJECT

The State may make such investigations as deemed necessary to determine the ability of the offeror to provide the supplies and/or perform the services specified. The State reserves the right to reject any proposal if the evidence submitted by, or investigation of, the offeror fails to satisfy the State that the offeror is properly qualified to carry out the obligations of the contract. *This includes the State's ability to reject the proposal based on negative references.*

4.1. OFFEROR QUALIFICATIONS/INFORMATIONAL REQUIREMENTS

In order for the State to determine the capabilities of an offeror to provide the supplies and/or perform the services specified in Section 3 above, the offeror must respond to the following requests for information regarding its ability to meet the State's requirements. **THE RESPONSE, "(OFFEROR'S NAME) UNDERSTANDS AND WILL COMPLY," IS NOT APPROPRIATE FOR THIS SECTION.**

4.1.1. REFERENCES. Offeror shall provide a minimum of three (3) references that are using supplies and/or services of the type proposed in this RFP. The references may include state government or universities where the offeror, preferably within the last five (5) years, has successfully provided services of the type referenced in this RFP. At a minimum, the offeror shall provide the company name, the location where the supplies/services were provided; contact person(s), customer's telephone number, e-mail address, and a complete description of the service type, and dates the services were provided. These references may be contacted to verify offeror's ability to perform the contract. The State reserves the right to use any information or additional references deemed necessary to establish the ability of the offeror to perform the conditions of the contract. Negative references may be grounds for proposal disqualification. If you use the Department of Transportation or its personnel as a reference, it will be considered as one reference.

4.1.2. RESUMES/COMPANY PROFILE AND EXPERIENCE. Offeror shall specify how long the individual/company submitting the proposal has been in the business of providing supplies and/or services similar to those requested in this RFP and under what company name. Offeror should provide a complete description of any relevant past projects, including qualifications, work experience, education, skills, etc., which emphasizes previous experience in this area should be provided for all key personnel who will be involved with any aspects of the contract.

4.1.3. METHOD OF PROVIDING SERVICES. Offeror should provide a work plan and the methods to be used that will convincingly demonstrate to the State what the offeror intends to do, the timeframes necessary to accomplish the work; and how the work will be accomplished to meet the contract requirements as more specifically detailed in Section 3. Offeror must specifically address each of the following requirements as defined in this RFP:

- 4.1.3.1.** Demonstrate the firm's experience in conducting related media campaigns by describing the techniques proposed to design and implement this campaign.
- 4.1.3.2.** Include information on the different ways the marketing campaign can be presented to the public and target audience.
- 4.1.3.2.** Demonstrate your ability to do the work with available manpower and resources, taking into consideration your present and project workload.

SECTION 5: COST PROPOSAL

5.0. COST SUBMITTAL

The cost proposal will be submitted as a part of the proposal.

The cost proposal must include a cost for all services identified in this RFP. The cost proposal should be itemized, including, at a minimum, cost for each task/deliverable, number of hours of each staff person assigned to the project, hourly rates for each staff person, fringe benefit rates for each staff person, overhead rate and direct costs. Proposals must include a breakdown of all costs for each task, item and deliverable.

5.1. TRAVEL EXPENSES

Travel expenses, reasonable per diem, communications, postage and other documented expenses will be billed separately and should not be included in the hourly cost rates. Receipts will be required for reimbursement of these expenses.

5.2. BUDGET

The amount of work to be performed annually under this Request for Proposal is unknown and is impossible to estimate.

The total budget for this project is \$74,000 which includes the original contract term and one (1) renewal. Offerors whose proposals exceed this amount will be considered “nonresponsive” per Section 2.3. *Classification and Evaluation of Proposals*, subsection 2.3.1. *Initial Classification of Proposals as Responsive or Nonresponsive*. If a proposal is found to be nonresponsive, it will not be considered further.

5.3. PAYMENT FOR SERVICES

Payments will be made based on verifiable hours and verifiable expenses.

5.4. COST REVISIONS

If at any time during the project, anticipated expenditures change, revised estimated expenditures for each federal fiscal year for the duration of the project must be provided. The revised estimate will be reviewed by the State to determine if the request will be approved.

SECTION 6: EVALUATION CRITERIA

6.0. EVALUATION CRITERIA

The evaluator/evaluation committee will review and evaluate the offers according to the following criteria based on a total number of **100 points**.

The **References, Resumes/Company Profile and Experience, Ability to Meet Supply Specifications, and Method of Providing Services** portions of the offer will be evaluated based on the following Scoring Guide. The **Cost Proposal** will be evaluated based on the formula set forth below.

SCORING GUIDE

In awarding points to the evaluation criteria, the evaluator/evaluation committee will consider the following guidelines:

Superior Response (90-100%): A superior response is a highly comprehensive, excellent reply that meets all of the requirements of the RFP. In addition, the response may cover areas not originally addressed within the RFP and/or include additional information and recommendations that would prove both valuable and beneficial to the agency.

Good Response (75-89%): A good response meets all the requirements of the RFP and demonstrates in a clear and concise manner a thorough knowledge and understanding of the project, with no deficiencies noted.

Fair Response (60-74%): A fair response minimally meets most requirements set forth in the RFP. The offeror demonstrates some ability to comply with guidelines and requirements of the project, but knowledge of the subject matter is limited.

Failed Response (59% or less): A failed response does not meet the requirements set forth in the RFP. The offeror has not demonstrated sufficient knowledge of the subject matter.

References		15 points possible
Category	Section of RFP	Point Value
A. References Included with Offeror's Response	4.1.1.	15

Resumes/Company Profile and Experience		20 points possible
Category	Section of RFP	Point Value
A. Years of Experience	4.1.2.	5
B. Applicability of Experience with Private/Public Sector	4.1.2.	5
C. Staff Qualifications	4.1.2.	10

Method of Providing Services		45 points possible
Category	Section of RFP	Point Value
A. Project Understanding & Approach	3.0. & 4.1.3.1.	20
B. Campaign Work Plan	3.3., 4.1.3.1. & 4.1.3.2.	20
C. Presentation to the Public	3.3. & 4.1.3.2.	5

Cost Proposal		20 points possible
Category	Section of RFP	Point Value
A. Cost Proposal	5.0.	20

Lowest Responsive Offer Total Cost _____ x Number of available points = Award Points

This Offeror's Total Cost

APPENDIX A: STANDARD TERMS AND CONDITIONS

By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.

ACCEPTANCE/REJECTION OF BIDS OR PROPOSALS: The State reserves the right to accept or reject any or all bids or proposals, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal.

ACCESS AND RETENTION OF RECORDS: The Contractor agrees to provide the Department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

ALTERATION OF SOLICITATION DOCUMENT: In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

ASSIGNMENT, TRANSFER AND SUBCONTRACTING: The Contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the Department. (Mont. Code Ann. § 18-4-141.)

AUTHORITY: The following bid, request for proposal, limited solicitation, or contract is issued in accordance with Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

BILLING: The State of Montana cannot pay for materials or services in advance. All billing against this purchase order must be made only after completion of receipt of merchandise or services rendered.

COMPLIANCE WITH LAWS: The Contractor must, in performance of work under the contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

CONFORMANCE WITH CONTRACT: No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the Department of Transportation Purchasing Section. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the Contractor's expense.

DISABILITY ACCOMMODATIONS: The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

FACSIMILE RESPONSES: Facsimile bids sent directly to the Department of Transportation will not be accepted; however, facsimile bids sent to a 3rd party and then delivered to the Department in a properly addressed, sealed envelope will be accepted.

FAILURE TO HONOR BID/PROPOSAL: If a bidder/Contractor to whom a contract is awarded refuses to accept the award (PO/contract) or, fails to deliver in accordance with the contract terms and conditions, the Department may, in its discretion, suspend the bidder/Contractor for a period of time from entering into any contracts with the State of Montana.

FORCE MAJEURE: Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

LATE BIDS AND PROPOSALS: Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to assure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

PAYMENT TERM: All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the State is allowed 30 days to pay such invoices. All Contractors may be required to provide banking information at the time of contract execution in order to facilitate state electronic funds transfer payments.

REFERENCE TO CONTRACT: The contract or purchase order number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the contract.

REGISTRATION WITH THE SECRETARY OF STATE: Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://www.sos.state.mt.us>

SEPARABILITY CLAUSE: A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

SHIPPING: Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

SOLICITATION DOCUMENT EXAMINATION: Vendors shall promptly notify the State of any ambiguity, inconsistency, or error, which they may discover upon examination of a solicitation document.

TAX EXEMPTION: The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED: Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services,

that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

TERMINATION OF CONTRACT: Unless otherwise stated, the State may, by written notice to the Contractor, terminate the contract in whole or in part at any time the Contractor fails to perform the contract.

UNAVAILABILITY OF FUNDING: The contracting agency, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason. (Mont. Code Ann. § 18-4-313 (3).)

U.S. FUNDS: All prices and payments must be in U.S. dollars.

VENUE: This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

WARRANTIES: The Contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Exceptions will be rejected.

APPENDIX B: CONTRACT

- 1.0. Parties
- 2.0. Effective Date, Duration and Renewal
- 3.0. Services and/or Supplies
- 4.0. Consideration/Payment
- 5.0. Access and Retention of Records
- 6.0. Assignment, Transfer and Subcontracting
- 7.0. Hold Harmless/Indemnification
- 8.0. Required Insurance
- 9.0. Compliance with Workers' Compensation Act
- 10.0. Independent Contractor
- 11.0. Compliance with Laws
- 12.0. Title and Ownership Rights
- 13.0. Non-Discrimination Notice
- 14.0. Federal Aid Requirements
- 15.0. Intellectual Property
- 16.0. Patent and Copyright Protection
- 17.0. Contract Termination
- 18.0. Liaison and Service of Notices
- 19.0. Meetings
- 20.0. Contractor Performance Assessments
- 21.0. Transition Assistance
- 22.0. Choice of Law and Venue
- 23.0. Scope, Amendment and Interpretation
- 24.0. Execution

CONTRACT #

1.0. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana, Department of Transportation (hereinafter referred to as “the State”), whose address and phone number are 2701 Prospect Avenue, Helena, MT 59620, (406) PHONE # and CONTRACTOR NAME, (hereinafter referred to as the “Contractor”), whose nine digit Federal ID Number, address and phone number are TAX ID, ADDRESS and PHONE NUMBER.

THE PARTIES AGREE AS FOLLOWS:

2.0. EFFECTIVE DATE, DURATION, AND RENEWAL

2.1. CONTRACT TERM. This contract shall take effect on START DATE, 20YEAR, and terminate on END DATE, 20YEAR, unless terminated earlier in accordance with the terms of this contract. (Mont. Code Ann. § 18-4-313.)

2.2. CONTRACT RENEWAL. This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in NUMBER-year intervals, or any interval that is advantageous to the State. This contract, including any renewals, may not exceed a total of NUMBER years. This renewal is dependent upon legislative appropriations.

3.0. SERVICES AND/OR SUPPLIES

Contractor agrees to provide to the State the following PROJECT DESCRIPTION.

3.1. SUPPLIES, EQUIPMENT & INSTRUMENTATION. Purchases of supplies or non-major items of apparatus, and equipment listed as a lump sum in the Proposal and for which reimbursement is sought will not exceed such lump sum unless approved in advance by the State.

Major items of apparatus and equipment for which reimbursement is sought and which are not identified specifically in the Proposal and approved as part of this Agreement must be approved by the State prior to purchase. A major item of apparatus or equipment is one not used up in the work on the project and costing \$5,000.00 or more.

All major equipment, and non-major equipment and supplies as indicated below, with value or utility at the end of the study purchased under this or previous contracts shall be released to the State at the close of this contract. At the sole option of the State, said apparatus and equipment may be kept by the State, sold at its depreciated value to the Contractor, or may otherwise be disposed of in accordance with the State of Montana and FHWA rules and regulations.

4.0. CONSIDERATION/PAYMENT

4.1. PAYMENT SCHEDULE. In consideration for the DESCRIPTION to be provided, the State shall pay according to the following schedule:

4.2. WITHHOLDING OF PAYMENT. The State may withhold payments to the Contractor if the Contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

5.0. ACCESS AND RETENTION OF RECORDS

5.1. ACCESS TO RECORDS. The Contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

5.2. RETENTION PERIOD. The Contractor agrees to create and retain records supporting the services as detailed herein for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

6.0. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The Contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.) The Contractor shall be responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. No contractual relationships exist between any subcontractor and the State.

7.0. HOLD HARMLESS/INDEMNIFICATION

Contractor agrees to defend, protect, indemnify and save harmless the State of Montana and the Department of Transportation against and from all claims, liabilities, demands, causes of action, judgments (including costs and reasonable attorney fees), and losses to them from any cause whatever (including patent, trademark and copyright infringements) arising from the Agreement and its execution. This agreement to indemnify includes any suits, claims, actions, losses, costs or damages of any kind, including the State's and Department's legal expenses, arising out of, in connection with, or incidental to the Agreement, but does not include any such suits, claims, actions, costs, or damages which are solely the result of the negligent acts, omissions or misconduct of Department's employees. If a claim arises out of, depends upon or relates to, a negligent act, omission, or misconduct of Contractor's employees, it will not be considered the sole negligence of the State and the Contractor agrees to defend, protect, indemnify, and save harmless the State of Montana and the Department.

The Contractor assumes all responsibility for ensuing and enforcing safe working conditions and compliance with all safety-related rules and regulations for the benefit of its own employees, the employees of any subcontractor, and the public. That responsibility includes all duties related to safety, regardless of whether any such duties are, or are alleged to be, "nondelegable" (e.g., the Montana Safe Place to Work Statute, etc.). This indemnification is expressly intended by the parties to include any claims, liabilities, demands, causes of action, judgments (including costs and reasonable attorney fees), and losses that are, or are alleged or held to be, based upon a breach by the Department of a nondelegable duty related to workplace safety for the Contractor's employees, the employees of any subcontractor, and the public.

8.0. REQUIRED INSURANCE

8.1. GENERAL REQUIREMENTS. The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

8.2. PRIMARY INSURANCE. The Contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

8.3. SPECIFIC REQUIREMENTS FOR COMMERCIAL GENERAL LIABILITY. The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

8.4. ADDITIONAL INSURED STATUS. The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

8.5. SPECIFIC REQUIREMENTS FOR AUTOMOBILE LIABILITY. The Contractor shall purchase and maintain coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident (personal injury), and \$100,000 per accident (property damage) to cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns or subcontractors.

8.6. ADDITIONAL INSURED STATUS. The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, hired, or borrowed by the Contractor.

8.7. DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

8.8. CERTIFICATE OF INSURANCE/ENDORSEMENTS. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by the Purchasing Services Section, Attn: Richele Parkhurst, P.O. Box 20437, Billings, MT 59104-0437. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

9.0. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to the Purchasing Services Section, PO Box 20437, Billings, MT 59104-0437 upon expiration.

10.0. INDEPENDENT CONTRACTOR

Due to requirements of Federal labor laws, individuals who are presently a Montana State employee will not be considered for potential award of the Agreement. A successful bidder, who, during the post-bid period or during the term of the Agreement, becomes a Montana State employee, must immediately notify in writing the Department's Field Maintenance Chief. Contractor agrees that, if it becomes a Montana State employee during those periods, or if it hires anyone to perform more than 50% of the work under the Agreement who is a Montana State employee, the Agreement is subject to immediate termination.

It is expressly agreed that the Contractor in fulfilling the terms of this Agreement is not an employee of the DEPARTMENT, but is solely an INDEPENDENT CONTRACTOR and not an employee of the DEPARTMENT.

11.0. COMPLIANCE WITH LAWS

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

12.0. TITLE AND OWNERSHIP RIGHTS

The State shall be given title to and all ownership rights in all data and content of the Marketing Plan, including but not limited to multimedia or images (graphics, audio and video), test and the like provided to the State (the "content"), but grants Contractor the right to access and use content for the purpose of complying with its obligations under this contract and the applicable Work Plan.

13.0. NON-DISCRIMINATION NOTICE

During the performance of this Agreement, _____ Contractor _____ (hereafter in this Section "the Party"), for itself, its assignees and successors in interest, agrees as follows:

A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

- (1) Compliance with Regulations: The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
- (2) Nondiscrimination: The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.
- (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) Information and Reports: The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.

- (5) Sanctions for Noncompliance: In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
- (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
 - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

B) COMPLIANCE WITH THE MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, SEC. 49-3-207, MCA

In accordance with Section 49-3-207, MCA, the Party agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

- (1) The Party will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
- (2) The Party will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: **"The Party will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Party. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Party."**
- (3) All video recordings produced and created under contract and/or agreement will be closed-captioned.

D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR PART 26

Each Agreement the Department signs with a Party (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The Party, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Party shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Party to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

14.0. FEDERAL AID REQUIREMENTS

Some of the product purchased from the resulting contract of this Request for Proposal may be purchased with Federal Aid Funds. Therefore, the following provisions will apply to the Invitation for Bid and to the resulting contract.

A. MONTANA PREFERENCES

Since Federal Aid Funds will be utilized to pay for this project, the Montana bid preferences will not apply.

B. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

C. NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

D. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

E. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION--PRIMARY COVERED TRANSACTIONS

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
 - d. Have not within a 3-year period preceding this application/ proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

F. INSTRUCTIONS FOR CERTIFICATION - LOWER TIER COVERED TRANSACTIONS

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

G. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION--LOWER TIER COVERED TRANSACTIONS

- 1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

H. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

- 1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

15.0. INTELLECTUAL PROPERTY

All patent and other legal rights in or to inventions created in whole or in part under this contract must be available to the State for royalty-free and nonexclusive licensing. Both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this contract.

16.0. PATENT AND COPYRIGHT PROTECTION

16.1. THIRD PARTY CLAIM. In the event of any claim by any third party against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify Contractor. Contractor shall defend such claim, in the State's name or its own name, as appropriate, but at Contractor's expense. Contractor will indemnify the State against all costs, damages and attorney's fees that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

16.2. PRODUCT SUBJECT OF CLAIM. If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State will determine if the Contract has been breached.

17.0. CONTRACT TERMINATION

17.1. TERMINATION FOR CAUSE WITH NOTICE TO CURE REQUIREMENT. The State may terminate this contract for failure of the Contractor to perform any of the services, duties, or conditions contained in this contract after giving the Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than ten working days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

17.2. TERMINATION FOR CONVENIENCE. The State may, by written notice to the Contractor, terminate this contract without cause. The State must give notice of termination to the Contractor at least # OF DAYS days prior to the effective date of termination.

17.3. REDUCTION OF FUNDING. The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(4).)

17.4. FEDERAL LABOR LAWS. A contractor who becomes a State of Montana employee during the term of the contract must immediately notify in writing the Montana Department of Transportation, Purchasing Services Section.

The Contractor agrees that if it becomes a State of Montana employee during those periods, or if it hires a State of Montana employee to perform more than 50 percent of the work under the contract, the contract is subject to immediate termination.

18.0. LIAISON AND SERVICE OF NOTICES

All project management and coordination on behalf of the State shall be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed pursuant to this contract shall be coordinated between the State's liaison and the Contractor's liaison.

_____ will be the liaison for the State.

_____ (Address)

_____ (City, State, ZIP)

_____ (Telephone #)

_____ (Cell Phone #)

_____ (Fax #)

_____ (E-mail)

_____ will be the liaison for the Contractor.

_____ (Address)

_____ (City, State, ZIP)

_____ (Telephone #)

_____ (Cell Phone #)

_____ (Fax #)

_____ (E-mail)

The State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints will first be directed to the liaison.

19.0. MEETINGS

The Contractor is required to meet with the State's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract or to discuss the progress made by Contractor and the State in the performance of their respective obligations, at no additional cost to the State. Meetings will occur as problems arise and will be coordinated by the State. The Contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired. However, at the Contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings two consecutive missed or rescheduled meetings, or to make a good faith effort to resolve problems, may result in termination of the contract.

20.0. CONTRACTOR PERFORMANCE ASSESSMENTS

The State may do assessments of the Contractor's performance. This contract may be terminated for one or more poor performance assessments. Contractors will have the opportunity to respond to poor performance assessments. The State will make any final decision to terminate this contract based on the assessment and any related information, the Contractor's response and the severity of any negative performance assessment. The Contractor will be notified with a justification of contract termination. Performance assessments may be considered in future solicitations.

21.0. TRANSITION ASSISTANCE

If this contract is not renewed at the end of this term, or is terminated prior to the completion of a project, or if the work on a project is terminated, for any reason, the Contractor must provide for a reasonable period of time after the expiration or termination of this project or contract, all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the contract. If there are no established contract rates, then the rate shall be mutually agreed upon. If the State terminates a project or this contract for cause, then the State will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said termination.

22.0. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

23.0. SCOPE, AMENDMENT AND INTERPRETATION

23.1. CONTRACT. This contract consists of # OF PAGES numbered pages, any Attachments as required, RFP #HWY - , as amended and the Contractor's RFP response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

23.2. ENTIRE AGREEMENT. These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

24.0. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

DEPARTMENT OF TRANSPORTATION

CONTRACTOR NAME

ADDRESS

ADDRESS

FEDERAL ID # _____

BY: _____
(Name/Title)

BY: _____
(Name/Title)

BY: _____
(Signature)

BY: _____
(Signature)

DATE: _____

DATE: _____

Approved as to Legal Content:

Approved as to Form:

Legal Counsel

Procurement Officer

Approved as to Civil Rights Language

Civil Rights Bureau

The Montana Department of Transportation attempts to provide reasonable accommodations for any known disability that may interfere with a person participating in any service, program or activity of the Department. Alternative accessible formats of this document will be provided upon request. For more information or to arrange special accommodations for disabilities, please call Richele Parkhurst at (406) 657-0274 Voice or 1-800-335-7592 TTY or (406) 444-7696 TTY.